

USAWC STRATEGY RESEARCH PROJECT

HOMELAND SECURITY IS MORE THAN HOMELAND DEFENSE

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## ABSTRACT

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The Army's total force structure (including the active duty, U.S. Army Reserve, and Army National Guard) and operational concepts are designed to support its primary wartime mission. Future modifications must include consideration as to how it will support the full-spectrum of its Homeland Security (HS) mission, including Incidents of National Significance (INS) (such as terrorist attacks or major disasters). Force structure and operational concepts have traditionally been based upon the assumption that the total force would be facing an enemy on foreign soil. The current structure is neither designed nor equipped to adequately support large numbers of displaced civilians; nor is it trained to establish, integrate and augment existing emergency and public services in the aftermath of INS. Proposed force structure transformation initiatives do not address those deficiencies and, as such, they will fail to achieve the President's federal HS "national domestic all-hazards preparedness" objectives. Increased operations tempo and deployments decrease the availability of Army National Guard (ANG) assets to support HS requirements, creating conflicting demands upon finite resources. The unpredictable nature of natural hazards (such as hurricanes, floods, wildfires, and earthquakes) and the potential magnitude of their devastation creates the perfect opportunity for a terrorist to take action while emergency responders are less vigilant. Therefore, it is imperative that HS readiness and response capabilities deny the nation's enemies the capability of exploiting such events by increasing major disaster response capabilities, thereby decreasing the duration of the recovery phase period. Accomplishing the HS mission should require the Army to re-evaluate proposed transformation initiatives. Then it must develop and implement future force structure and operational concepts that will achieve the President's HS "national domestic all-hazards preparedness" objectives, by establishing complementary and integrated, independent and collective HS roles for each of the elements of the total force, matching capabilities to requirements. Existing legislation must be modified to allow utilization of all Reserve Component elements, including the U.S. Army Reserve and ANG, to support all federal and state hazards.



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## HOMELAND SECURITY IS MORE THAN HOMELAND DEFENSE

### NATURAL DISASTERS CAN THREATEN NATIONAL READINESS

Ultimately, the foundation of American strength is at home.

- President George W. Bush<sup>1</sup>

The United State's (U.S.) ability to maintain its position as the global leader is directly related to its geographical factors and further enhanced by the utilization and application of its elements of national power. The ability to design, train, equip, deploy and employ its military forces has been critical to the nation's ability to achieve both Homeland Security (HS) and its national strategic objectives. That instrument of national power is dependent upon the continued ability to protect and ensure access to all elements of national power. Although some may argue the precedence of their importance and influence upon the nation's continued ability to maintain its global preeminence, collectively they are all necessary to achieving the nation's desired strategic outcomes.

The impact of the terrorist attack of September 11, 2001 which destroyed the World Trade Center (WTC), ultimately killing 2,726 people,<sup>2</sup> provided the impetus for the President to declare the Global War on Terrorism (GWOT). The incident also identified seams in our national defense program that the terrorists were able to exploit. In order to prevent future terrorist attacks and improve the nation's HS preparedness, response and recovery capabilities the President and national leadership have developed and implemented numerous programs, with the intent of coordinating all federal, state and local activities and resources under the direction of a lead or primary agency.

In order to prosecute the GWOT, the focus and priority for resourcing appears to be primarily upon the Department of Defense (DOD) and those organizations and programs that support current military operations. Although additional organizations, programs, and funding have been provided to establish and support HS operations more emphasis seems to be placed upon terrorism preparedness and response capabilities, with less emphasis being placed on other Incidents of National Significance (INS), such as natural disaster response. Future activities related to supporting the HS mission must ensure that natural disaster preparedness and response capabilities not be overlooked as a result of the greater emphasis placed upon terrorism prevention and response. The results of major natural disasters can be as destructive and disruptive to our nation's critical infrastructures as terrorist attacks, creating seams in our nation's readiness and response capabilities. The increased resources required to respond to



an INS creates a point of weakness when the nation's resources are occupied with other events. Therefore, the timely ability to respond to natural disasters is crucial.

This paper provides observations of the President's and national leader's efforts to obtain support for the GWOT through an apparent marketing approach. Army force structure modernization and transformation suggestions, to meet its HS mission requirements, are provided. A summary of the current national security policy is presented. A natural disaster scenario is included using a potential future recurrence of the New Madrid earthquake.

In addition to its military support to the active Army's mission requirements the Army National Guard (ANG) has traditionally provided the DOD's primary Reserve Component (RC) assets for Defense Support of Civil Authority (DSCA). The ANG is intended to continue in that capacity. The purpose of this paper is to identify the impact of the current operations tempo (OPTEMPO) upon the ANG's ability to support all of its missions (including HS), describe the requirement for improving Reserve Component (RC) force structure capabilities and recommend how to increase the assets available to support HS operations.

### **THE PERFECT MARKETING STRATEGY**

Preparedness activities to further enhance the capabilities of State and local first responders to deal with terrorist activity is essential, but these enhanced responsibilities must be in addition to and not at the expense of natural disaster preparedness.

- Senator Jim Jeffords<sup>3</sup>

If a poll were conducted of U.S. citizens regarding their understanding of what HS means, their answers would likely include some concept(s) related to policies and programs regarding the security and defense of the Continental U.S. from direct terrorist attacks. In reality, the primary approach to achieving HS is ensuring that the U.S. has the ability to project and maintain an active overseas deterrence capability, thereby preventing potential threats from reaching the U.S. The WTC terrorist attack facilitated the GWOT and establishment of the Department of Homeland Security (DHS). This afforded the President, political leaders, DOD and military leadership the ability to use the incident to encourage the nation to support development and implementation of comprehensive, long-term government and defense initiatives intended to "secure the United States from direct attack."<sup>4</sup> However, less emphasis has been placed upon other aspects of HS (such as natural disaster preparedness and response capabilities).

The President and other leaders have advocated the need for increased HS by convincing U.S. citizens that the only way the nation can achieve and maintain adequate defense of the homeland is through their support of proposed government and defense budget initiatives. Unfortunately, the general public is ignorant of the fact that proposed defense budget initiatives include a multi-billion dollar force transformation program in addition to the supplemental funding to support on-going overseas deterrence operations and the GWOT. These same national leaders appear to be using the opportunity to advance their government and defense related programs before the nation's willingness to support such spending wanes, having little intention of changing how the military will be deployed and employed. Although national leaders stress the need for an increased military capability to ensure defense of the homeland, they have made provision of the nation's HS a "primary mission for the RC,"<sup>5</sup> which may require reconsideration of RC force structure and how they are utilized in order to ensure that their capabilities meet the full-spectrum of HS operations.

### **MODERN TIMES REQUIRE MODERN METHODS**

[Incidents of National Significance may]:

Result in numerous casualties; fatalities; displaced people; property loss; disruption of normal life-support systems, essential public services, and basic infrastructure; and significant damage to the environment.

- National Response Plan: Planning Assumptions and Considerations<sup>6</sup>

President Bush's December 17, 2003 HS Presidential Directive/HSPD-8, establishes the requirement for a "national domestic all-hazards preparedness goal," that would "improve delivery of federal preparedness and assistance to State and local governments" for all "domestic terrorist attacks, major disasters, and other emergencies."<sup>7</sup> The Army's total force structure (including the active duty, U.S. Army Reserve, and Army National Guard) and operational concepts are designed to support its primary wartime mission. Force structure and operational concepts have traditionally been based upon the assumption that the total force would be facing an enemy on foreign soil. As such, they have focused on conducting and supporting combat operations on the distant battlefield, thereby achieving Homeland Defense (HD) through forward deterrence.

As stated in the National Strategy for Homeland Security (NSHS), the DOD supports HS "through its military missions overseas, homeland defense, and support to civil authorities."<sup>8</sup> It is important to understand the distinction between HS and HD. The HS area of responsibility represents those national-level, coordinated activities that may include DOD, federal, state, and

local agencies and personnel, which are focused upon prevention and reduction of terrorist activities and their affects.<sup>9</sup> Homeland Defense are those military-level, associated functions related to deterrence, prevention, and the defeat of external threats to the U.S., its territories, and national interests, which may also require utilization of non-DOD assets.<sup>10</sup> Although DOD may assume a subordinate support role to another federal agency during HS matters, primarily through the provision of DSCA<sup>11</sup> for domestic INS, it functions as the lead-agent and directs other federal agencies during HD operations, as established in Section 876 of Public Law 107-296 (the Homeland Security Act of 2002).<sup>12</sup>

Increased OPTEMPO and deployments decrease the availability of ANG assets to support HS requirements, creating conflicting demands upon finite resources. Resource requirements for responding to INS can be as intensive as those required to support wartime operations. The unpredictable nature of natural hazards, potential magnitude of their devastation and impact upon the nation's infrastructure creates the perfect opportunity for a terrorist to take action while emergency responders are less vigilant. Therefore, it is imperative that HS readiness and response capabilities deny the nation's enemies the capability of exploiting such events by increasing INS response capabilities, thereby decreasing the duration of the recovery period.

The Army should re-evaluate proposed transformation initiatives, ensuring they can adequately support the full-spectrum of the HS mission, including INS. The development and implementation of future force structure and operational concepts would then achieve the President's HS goal, by establishing complementary and integrated, independent and collective roles for each element of the total force, matching capabilities to requirements. Existing legislation must be modified to allow utilization of all RC-elements, including the U.S. Army Reserve (USAR) and ANG, to support all federal and state hazards. This will provide access to assets previously unavailable and increase federal and state-level HS preparedness and response capabilities required to support the President's HS goal. Meeting the President's goal will require coordination, development, and implementation of a fully integrated national emergency preparedness and response system comprised of federal, DOD, state, and local agencies to the first-responder level.<sup>13</sup>

#### **CURRENT NATIONAL SECURITY POLICY**

Defending our Nation against its enemies is the first and fundamental commitment of the Federal Government.

- President George W. Bush<sup>14</sup>

The NSHS established strategic objectives of HS as “(in order of priority): prevent terrorist attacks within the U.S.; reduce America’s vulnerability to terrorism; and minimize the damage and recover from attacks that do occur.”<sup>15</sup> It also identified “six critical mission areas: intelligence and warning, border and transportation security, domestic counter-terrorism, protecting critical infrastructure, defending against catastrophic terrorism, and emergency preparedness and response.”<sup>16</sup> The NSHS national vision includes the creation of “a fully integrated national emergency response system that is adaptable enough to deal with any terrorist attack, no matter how unlikely or catastrophic, as well as all manner of natural disasters.”<sup>17</sup>

Although references to natural disasters are included in both the National Security Strategy (NSS) and NSHS, guidelines and policies regarding such disasters are typically included with references related to terrorism. The intent of HS initiatives is to ensure that adequate resources are available to support not only terrorism, but natural disasters as well. As part of his NSHS, the President noted that “response efforts to all major incidents entail the same basic elements.”<sup>18</sup> By their very nature, terrorist attacks and natural disasters will require two separate and distinct response capabilities.

Terrorist attacks may not be as simple as an isolated incident, as the nation experienced on September 11, 2001. Terrorist attacks could include some form of armed incursion and/or multiple and continuous, random terrorist activities conducted simultaneously at various locations throughout the U.S. If the terrorist attack was an isolated incident the response would principally entail the provision of law enforcement and recovery operations, as was seen after both the Oklahoma City Bombing and WTC incidents. If armed incursion or multiple and continuous events were to occur, the response would entail a combination of defensive and recovery operations.

No hurricane, flood, wildfire, or earthquake in our nation’s history has ever required a defensive or armed response. The President’s suggestion that responding to “all major incidents” can be accomplished with the “same basic elements” is unrealistic. The requirements to prevent and respond to terrorist activities are not the same as those needed to respond to, and reduce the affects of, natural disasters. Therefore, it is important that HS policies, plans, and programs consider the separate and distinct preparedness and response capabilities needed to support terrorist attacks versus major disasters.

## NEW MADRID EARTHQUAKE – DISASTER SCENARIO

[Incidents of National Significance may]:

? Occur at any time with little or no warning in the context of a general or specific threat or hazard; and

? Overwhelm capabilities of State, local, and tribal governments, and private-sector infrastructure owners and operators;

- National Response Plan: Planning Assumptions and Considerations<sup>19</sup>

During the early morning hours of December 16, 1811 the Mississippi River valley was struck by the New Madrid earthquake. Residents of Cincinnati, Ohio (pop. in 1811 was 2,540;<sup>20</sup> current pop. 331,285),<sup>21</sup> located 420 miles from New Madrid, Missouri (the earthquake's epicenter), were assaulted by the primary wave that traveled at almost 14,000 miles per hour, approximately one-minute and eighteen-seconds after the initial quake.<sup>22</sup> The cities of New Madrid (pop. in 1811 was 800;<sup>23</sup> current pop. 19,187)<sup>24</sup> and Little Prairie, Missouri, now called Caruthersville (pop. in 1811 was 200;<sup>25</sup> current pop. 6,760),<sup>26</sup> were almost totally destroyed.<sup>27</sup> The New Madrid earthquake's seismic activity traveled "from the Gulf Coast to the Atlantic shore to Quebec," affecting almost two-million square miles.<sup>28</sup> The New Madrid earthquake is the largest recorded within the contiguous U.S. (having an estimated Richter scale magnitude of 8.1).<sup>29</sup> Estimates of a recurrence are as high as 97%.<sup>30</sup>

Earthquakes can occur in a series over an extended period of time, with little or no advanced warning. The first of a series of five New Madrid earthquakes occurred on December 16, 1811. The fifth, and final, earthquake occurred on February 7, 1812. "Seismologists now believe the New Madrid earthquakes represent the greatest known release of seismic energy in the world."<sup>31</sup> Based upon the New Madrid seismic zone's increased population densities and susceptibility to earthquake activity due to structural designs that do not meet standards the number of lives lost, casualties generated, and destruction will overwhelm the capabilities of federal, state (including the ANG), and local agencies within the seismic zone. "The National Research Council has estimated that a repeat of the 1811 New Madrid earthquake could result in hundreds of thousands of lives lost and over \$100 billion dollars of damage in a 26-state area."<sup>32</sup> If the New Madrid earthquake were to strike today approximately 60-percent of Memphis, Tennessee (current pop. 650,100)<sup>33</sup> would be destroyed with an estimated \$50-billion dollars in damages and thousands dead.<sup>34</sup> Other major cities located within the New Madrid seismic zone and Census 2000 populations include: St. Louis,

Missouri/pop. 348,189; Indianapolis, Indiana/pop. 781,870; Little Rock, Arkansas/pop. 183,133; and Louisville, Kentucky/pop. 256,231.<sup>35</sup>

There were 12,984 personnel that responded to the 1995 Oklahoma City bombing.<sup>36</sup> The estimated number of responders to the 2001 WTC is as high as 30,000 personnel.<sup>37</sup> Those terrorist attacks required a limited response when compared to what would be required to respond to another New Madrid earthquake. A recurrence of the New Madrid earthquake will require massive amounts of additional personnel and equipment be transferred from outside of the affected area in order to meet response requirements. The ability to utilize all RC-elements in a federal status will ensure additional resources are available to respond to all hazards.

#### **REQUIREMENTS EXCEED CAPABILITIES**

[Incidents of National Significance may]:

? Require extremely short-notice Federal asset coordination and response timelines; and

? Require prolonged, sustained incident management operations and support activities.

- National Response Plan: Planning Assumptions and Considerations<sup>38</sup>

The military requirements to support the full-spectrum of NSS and NSHS operations, including all types of major disasters, exceed the capabilities of any one organization. Although the U.S. Northern Command (USNORTHCOM) is the DOD's principle military organization responsible for HD, it is primarily a staff agency with no direct assets to deploy. USNORTHCOM submits its requests for military forces to support its mission to DOD and the forces are provided through the U.S. Joint Forces Command, with Army forces provided by Forces Command.<sup>39</sup> The additional time for coordinating requirements may hinder USNORTHCOM's ability to respond in a timely manner and may even cause delays, thereby making the necessary steps to coordinate requirements barriers to an INS response.

The Army's active duty force pool consists of approximately 485,000 personnel. The USAR has approximately 205,000 personnel. The USAR force structure is composed of 1% combat arms, 54% Combat Service Support (CSS), and 18% Combat Support (CS) units, with a 27% mobilization base expansion capability. The USAR provides 97% of the Army's civil affairs units, 89% of psychological operations, 72% of public affairs, and 70% of its hospital capabilities. The ANG has approximately 350,000 personnel. The ANG force structure is composed of 52% combat arms, 22% CSS, and 17% CS units, with a 9% mobilization base

expansion capability (NGB, 2004). The ANG provides 44% of the total Army's combat divisions, 56% of armored battalions, 70% field artillery battalions, 49% air defence [sic] artillery, 32.5% CSS force, and 41% of its combat engineers.<sup>40</sup>

Decreased active duty force structure has limited the Army's wartime capabilities, increasing utilization of the RC in order to meet operational requirements. Current OPTEMPO also affects the Army's HS readiness and response capabilities, further challenging its ability to achieve all of the nation's NSS and NSHS objectives. The ANG force pool that would be available to augment HS requirements may be significantly increased as a result of the ANG senior leadership's suggestion that a "predictive deployment model" be developed ensuring "the force is managed to permit" only 25% of the ANG's force be "deployed to the warfight," with a "goal of no more than one substantial deployment every five or six years."<sup>41</sup> Although the restriction is intended to increase the availability of ANG to support its state and HS missions, such unilateral initiatives will decrease the Army's wartime combat reserves, further limiting its ability to meet OPTEMPO requirements. The Army's ability to maintain its forward deterrence capability may also be negatively affected by such a restrictive deployment model. The OPTEMPO is not expected to diminish over the next 15-20 years.<sup>42</sup>

Currently, the ANG is expected to "continue to play the major role in homeland security personnel augmentation when needed."<sup>43</sup> Although the ANG is expected to be a major source of HS personnel augmentation current OPTEMPO, budget constraints, limited recruiting success, and improper force structure challenge its ability to meet existing HS missions. During testimony before the House of Representatives Committee on Government Reform, Janet A. St. Laurent, Director Defense Capabilities and Management, reported that "...more than 51 percent of the Army [National] Guard members...have been activated to meet new homeland and overseas demands. The Army [National] Guard has experienced significant difficulties in responding to these extensive and ongoing requirements...because much of it was funded and equipped as a later-deploying reserve force rather than an operational force designed for continued overseas deployment."<sup>44</sup> She concluded that, "Because DOD has not fully defined requirements, readiness standards, and readiness measures for the homeland security missions it will lead or support, the Guard's preparedness specifically for homeland security missions is unknown."<sup>45</sup>

The establishment of Emergency Mutual Assistance Compacts (EMAC) between states regarding utilization of ANG units and members to assist other states may not ensure that capabilities will meet requirements, because it draws from a force pool that is already overtaxed. A supported state may not be able to draw from EMAC-established resources from another

supporting state, if they are already committed to other state or federal missions. In light of the potential for the OPTEMPO to remain unchanged for the next three-to-five-years, it is unlikely that the ANG's ability to meet HS missions will improve. Similar challenges affect the USAR's ability to support the Army's HS mission.

#### **TRANSFORMATION TO MEET HOMELAND SECURITY OBJECTIVES**

[The] Department of Defense would be involved during emergencies such as responding to an attack or to forest fires, floods, tornadoes, or other catastrophes. In these circumstances, the Department may be asked to act quickly to provide capabilities that other agencies do not have.

- President George W. Bush<sup>46</sup>

In order to maintain military advantage the Army's total force will continue to experience internal reorganization and restructuring through implementation of future transformation initiatives. Although Congress recently approved an increase in the force cap, the total force will continue to experience some measure of downsizing under the Total Army Analysis resource process. Strategic leaders must be willing and able to meet reformation demands without sacrificing or degrading total force readiness and response capabilities, ensuring its ability to achieve NSS and NSHS objectives. The primary role of the active duty force must remain focused upon current operations and its HD mission. Future RC transformation initiatives are crucial to ensuring that adequate HS resources are available for major disaster responses.

Following the 1993 "Bottom-Up Review" reported by the Secretary of Defense, the USAR and ANG composition and primary roles were modified under the 1993 Army Off-Site Agreement (AOSA). The AOSA gave the USAR primary responsibility for providing the Army's CSS and a part of the CS. Under the AOSA, the ANG received almost all of the reserve combat forces whose primary role was to provide a balanced force. The ANG was tasked to provide trained and ready combat and support forces for wartime, and to be able to respond to peacetime domestic emergencies.<sup>47</sup>

The ANG's force structure and operational concepts are designed to support its primary wartime mission. Future modifications must consider how the ANG will support the full-spectrum of its HS mission, including INS (such as terrorist attacks or major disasters). To meet current operational requirements to fill active duty CS shortfalls, the ANG has retrained 27-ANG units "as military police from other specialties such as field artillery."<sup>48</sup> However, future Army transformation initiatives will convert the ANG's combat elements to Stryker Brigade Combat Team (SBCT) force structures to facilitate their ability to integrate with active duty combat forces



during wartime operations. The availability of CSS and CS capabilities, which are crucial to supporting major disaster responses, will be further limited as a result of the ANG's reorganization to SBCT elements. The USAR will then be the source for larger numbers of CSS and CS assets to support INS responses.

The RC's current structure is neither designed nor equipped to adequately support large numbers of displaced civilians; nor is it trained to establish, integrate and augment existing public services in the aftermath of INS. Proposed force structure transformation initiatives do not address those deficiencies, as they are being established to meet the Army's wartime force structure requirements and won't be implemented until 2012 as part of its Future Force Transformation Plan. The process for their development did not include interagency coordination or consideration of HS requirements. As such, proposed transformation initiatives will fail to ensure that the RC Future Force's structure will "provide capabilities that other agencies do not have,"<sup>49</sup> in support of HS requirements.

Prior to implementing any further modifications the wartime and peacetime missions of the USAR and ANG must be reviewed and then re-established. This will ensure that each RC-element is reorganized, equipped and trained in a manner that supports both missions, ultimately decreasing conflict or redundancy and increasing our nation's readiness posture by establishing complementary and integrated, independent and collective roles, furthering the total force's ability to support the full-spectrum of operations, including HS. This includes development and implementation of force structure and operational initiatives that match capabilities to requirements, improving our nation's ability to achieve its NSS and NSHS objectives and protect its national and strategic interests.

#### **RESERVE COMPONENTS (RC) LEGISLATION INITIATIVES**

Current legislation (Title 10, U.S. Code, Sub. E, Part II, Chpt. 1209, Sec.12304 – Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency) prohibits utilization of "a unit or member" of the RC from providing "assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe."<sup>50</sup> Although the U.S. Code definition of RC includes the USAR and ANG, the ANG is not prohibited from providing such assistance while in a State Active Duty or Title 32-status. In addition to legislative restrictions limiting RC utilization, while in a federal-status, there are concerns regarding the USAR's ability to maintain the provisions of the Posse Comitatus Act (PCA). These concerns include whether-or-not USAR members should be armed, or whether they have had adequate training in civilian law

enforcement procedures should they be utilized to support such activities while in a Federal status.<sup>51</sup> Although the USAR has additional RC-CSS and CS capabilities it is limited to providing a "Good Samaritan,"<sup>52</sup> immediate response as a result of legislative restrictions. Although not intended for that purpose, utilization of USAR members to support HS is accomplished by placing them in a limited 'active duty for training' status, allowing members to serve no more than 30-days per Fiscal Year (IAW 10 USC, Sub. E, Part I, Chpt. 1005, Sec. 10147).<sup>53</sup>

Frequently, ANG members are utilized to perform functions other than their military specialties when responding to major disasters. As previously noted, neither the USAR nor ANG is capable of independently supporting the President's HS goal. Meeting the goal will require modification of existing legislation allowing utilization of all RC-elements in support of INS while in a federal status. The ability to utilize all RC-elements will be crucial to ensuring adequate personnel and equipment is available to support HS requirements.

The ANG can be utilized to support HS in three capacities: (1) in state service, under the direction of the governors; (2) in state service, but performing duties of federal interest, in Title-32 status; and (3) in federal Title-10 status, when mobilized under the direction of the President or Secretary of Defense.<sup>54</sup> Although ANG units and members may be utilized in those capacities, they do so under the command and control of the individual governors in a state service rather than federal status in the first two of the three capacities listed, yet the federal government funds their services while in both Title-32 and Title-10 status. Differing state and territorial laws also impact upon utilization of the ANG during peacetime. Governors may limit or withhold utilization of ANG units and members based upon status, which may significantly impact upon the nation's readiness and response capabilities.

State governors, the National Guard Bureau (NGB), states' lobbyists, and other organizations and agencies who have a vested interest in the ANG retaining its current role as the individual state's 'militia,' with primary responsibility for responding to domestic emergencies, can be expected to challenge attempts to modify existing legislation. The ability to draw from all RC-elements to meet the President's HS goal will have no impact upon a governor's continued utilization of ANG units and members to support a state's domestic requirements. Potential complications and confusion regarding command and control of RC forces, utilized to support federal response to major disasters, will decrease. The issue of possible violation of the PCA can be easily avoided by concurrent utilization of both federal and state resources. Although governors would prefer having the federal government provide additional funding for utilization of ANG in a Title-32 status, federal monies should only be

provided for those ANG services that cannot be provided by Title-10 forces. The ANG personnel acting in a Title-32 status, with the potential requirement to provide support to state and local law enforcement agencies, would be required to wear a 'National Guard' rather than 'U.S. Army' service tape on the breast pocket of their uniform. This will provide ready identification of their duty-status. The nation's enemies will continue to have opportunities to exploit, should legislative restrictions remain unchanged.

#### **DUAL-USE' OR SECONDARY MISSION**

Were senior leadership within the ANG and the governors to be asked, they would argue that the ANG will continue to be capable of fulfilling all of its various state and federal, wartime and peacetime missions. In his National Guard 2005 Posture Statement LTG H. Steven Blum, Chief, NGB established that the ANG is "...first and foremost, a provider of ready, trained, and equipped warfighting units to combatant commanders..." and that the 2001 WTC attack has "...refocused us on our fundamental responsibility to defend the homeland -- the original mission of the militia."<sup>55</sup> Lieutenant General Blum stated that the ANG is capable of providing "...dual-use" -- that is to say, the combat skill sets in these units are directly applicable to peacetime domestic support operations. We have developed a force management model that will help us to ensure that sufficient appropriate forces, properly resourced are available to the Governors for State, Homeland Defense and support to Homeland Security missions."<sup>56</sup> Combat skill sets are not the capabilities required for major disaster response.

Although comments included in LTG Blum's National Guard 2005 Posture Statement seem to establish the ANG's roles and responsibility as the RC source of "warfighting units to combatant commanders" and its "fundamental responsibility to defend the homeland -- the original mission of the militia," additional comments made during his address to the National Governors Association give a contrary impression. During that speech, he asked that the governor's support "legislation proposed by the Department of Defense to expand the authority of Title 32 of the US Code," which would "permit expanded use of federally funded [Army] National Guard forces, under the respective governor's control, for homeland defense and support for homeland security operations."<sup>57</sup> Lieutenant General Blum went on to suggest that a "predictive deployment model" be developed ensuring "the force is managed to permit" only 25% of the ANG's force be "deployed to the warfight," with a "goal of no more than one substantial deployment every five or six years."<sup>58</sup> The intent of his proposed model would ensure "that a minimum of 50 percent (and up to 75 percent)" of the ANG "remains available to

the governor for state missions, homeland defense, and support for homeland security operations.”<sup>59</sup>

How will expanded use of federally funded ANG, under the governor’s control, for HS operations ensure that the ANG can fulfill its wartime role and responsibilities as the RC source of “warfighting units to combatant commanders?” The ANG provides 44% of the total Army’s combat divisions, 56% of armored battalions, 70% field artillery battalions, 49% air defence [sic] artillery, 32.5% CSS force, and 41% of its combat engineers.<sup>60</sup> The ANG’s reorganization to SBCT elements will limit its CSS and CS capabilities. How will “combat skill sets: support peacetime domestic operations? What affect will the initiatives suggested by LTG Blum have on the nation’s HD readiness and response capabilities if utilization of the ANG is limited to providing only 25% of its force, every five to six years, in support of the warfighting combatant commanders? Based upon LTG Blum’s suggestions, it would appear that, although the ANG is the nation’s primary RC source for augmenting its warfighting capabilities, the ANG’s fulfillment of it’s HS role may be seen as a secondary mission by the active Army.

## **RECOMMENDATIONS**

Recommendations should be feasible, realistic and practical. Otherwise, it would be easy to suggest sweeping changes that can’t be achieved. An evaluation of existing programs and requirements must be completed prior to implementing program or organizational changes. This will ensure that capabilities meet requirements, without wasting resources or creating redundancies. The following recommendations meet the litmus test of being feasible, realistic and practical. If implemented, they will ensure that the Army’s force structure capabilities meet the full-spectrum of HS requirements, including INS.

Future transformation consideration should ensure that the capabilities provided are adequate to meet HS requirements. Although there are specialty organizations supporting DSCA, the primary services provided by ANG units and personnel in support of major disasters have included the distribution of food, clothing, and water; and other non-emergency support related services. In the event of a major natural disaster, or a series of concurrent disasters, state and local assets are likely to be overwhelmed. The need for ready, trained and equipped forces capable of establishing and/or augmenting existing emergency and public services in the aftermath of INS is paramount. Those capabilities can only be achieved through the review and modification of existing military programs. The WTC “required about 10,000 skilled support personnel (heavy equipment operators, truck drivers, iron workers, carpenters, and laborers) per day during the initial search and cleanup period.”<sup>61</sup> The capabilities must support the

requirements, rather than simply providing a 'body' to be utilized in 'some' capacity. The RC-soldier's individual and collective training should include such things as fire and safety, search and rescue, and debris stabilization and removal so they can have a basic knowledge and understanding of those functions when supporting first responders immediately following an INS. The individual training, knowledge, and capabilities used to support HS missions can also be applied to combat and military-operations-other-than-war.

Current legislation prohibits utilization of RC members and units from supporting major disaster responses while in a federal status. Although the ANG is expected to be a major source of HS personnel augmentation current OPTEMPO, budget constraints, limited recruiting success, improper force structure, and proposed deployment restrictions challenge its ability to meet existing HS missions. Modification of existing legislation to allow utilization of all RC members and units will increase resources available to respond to INS. Active duty, federal forces have always been utilized to provide DSCA on a limited basis.

The most common arguments against utilization of military forces other than ANG to respond to INS appear to center around the governor's inability to control and direct the utilization of non-state forces, and the potential for PCA violations. The potential need to utilize forces in a law enforcement capacity may represent only a small portion of INS response requirements. Those instances can clearly be managed by a smaller commitment of ANG personnel. This would also help to reduce the level of conflicting demands upon the ANG's finite resources, while ensuring that trained and ready reserve combat forces are available to support the Army's wartime mission and HD. If the forces are going to be federally funded to provide DSCA, the Defense Coordinating Officer is the more logical choice for controlling and directing those forces. Legislative change allowing utilization of all RC-elements is crucial to achieving HS objectives. The responsibilities to meet NSS and NSHS objectives are too vast for one organization to adequately achieve them.

## **CONCLUSION**

Based upon current and future OPTEMPO requirements, and decreased force structures and operational capabilities, no single element of the total force is capable of independently supporting the President's HS goal. Transformation and deployment initiatives are uncoordinated and need further review prior to implementing any additional modifications to ensure that capabilities meet requirements. The intent of HS transformation initiatives must ensure that adequate resources are available to support not only wartime, but all HS requirements, including INS (such as terrorist attacks and major disasters).

There are some who might advocate consolidation of the USAR into the ANG, forming one RC-element. They would probably attempt to emphasize how such consolidation would increase the ANG's ability to meet its wartime and HS requirements and eliminating any potential conflict regarding utilization of forces in support of INS, because all forces would be ANG and not subject to PCA limitations. The reality would probably be much different from their opinions. Continued OPTEMPO demands upon each element of the RC, and their different force structures and wartime missions, would make it difficult and costly to complete a major modification of the USAR and ANG force structures and roles, similar to those directed by the 1993 AOSA. The confusion and delays associated with such a venture could significantly jeopardize the nation's readiness and response capabilities. The primary changes necessary to support HS should focus upon ensuring that the forces available are designed and equipped to adequately support large numbers of displaced civilians; and that they are trained to establish, integrate and augment existing emergency and public services in the aftermath of INS.

Interagency rivalries and parochialism represent the greatest impediments to achieving the President's HS goal. There are more than 87,000 federal, state, and local jurisdictions.<sup>62</sup> By their very nature, the complexities of HS programs, existing and future interagency rivalries, and availability and competition for limited funding will negatively influence RC effectiveness. These barriers further jeopardize the nation's ability to prepare for, mitigate, respond to, and recover from the effects of natural or manmade disasters. Because the nation's enemies will focus efforts towards areas of perceived vulnerability, exploiting their weaknesses, the nation's response should be an integrated, complimentary system-of-systems that is seamless, which can be achieved by developing and implementing modern RC-transformation and legislative initiatives. As stated by President Bush, in his NSHS, there are "too many seams in our current response plans and capabilities."<sup>63</sup> Therefore, it is imperative that HS readiness and response capabilities deny the nation's enemies the capability of exploiting such seams.

WORD COUNT=5,995



## APPENDIX 1: ACRONYMS

ANG	Army National Guard
AOSA	Army Off-Site Agreement
CS	Combat Support
CSS	Combat Service Support
DHS	Department of Homeland Security
DOD	Department of Defense
DSCA	Defense Support of Civil Authority
EMAC	Emergency Mutual Assistance Compact
GWOT	Global War on Terrorism
HD	Homeland Defense
HS	Homeland Security
INS	Incidents of National Significance
NGB	National Guard Bureau
NSHS	National Strategy for Homeland Security
NSS	National Security Strategy
OPTEMPO	Operations Tempo
PCA	Posse Comitatus Act
RC	Reserve Component
SBCT	Stryker Brigade Combat Team
U.S.	United States
USAR	U.S. Army Reserve
USNORTHCOM	U.S. Northern Command
WTC	World Trade Center





## APPENDIX 2: GLOSSARY OF KEY TERMS<sup>64</sup>

**Catastrophic Incident.** Any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic event could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to State, local, tribal, and private-sector authorities in the impacted area; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened. All catastrophic events are Incidents of National Significance.

**Critical Infrastructures.** Systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

**Defense Support of Civil Authorities (DSCA).** Refers to DOD support, including Federal military forces, DOD civilians and DOD contractor personnel, and DOD agencies and components, for domestic emergencies and for designated law enforcement and other activities.

**Emergency.** As defined by the Stafford Act, an emergency is “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”

**Emergency Response Provider.** Includes Federal, State, local, and tribal emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities. (See section 2(6), Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135 (2002).) Also known as “emergency responder.”

**Emergency Support Function (ESF).** A grouping of government and certain private-sector capabilities into an organizational structure to provide the support, resources, program implementation, and services that are most likely to be needed to save lives, protect property and the environment, restore essential services and critical infrastructure, and help victims and communities return to normal, when feasible, following domestic incidents. The ESFs serve as the primary operational-level mechanism to provide assistance to State, local, and tribal governments or to Federal departments and agencies conducting missions of primary Federal responsibility.

**Incident.** An occurrence or event, natural or human caused, that requires an emergency response to protect life or property. Incidents can, for example, include major disasters, emergencies, terrorist attacks, terrorist threats, wildland and urban fires, floods, hazardous materials spills, nuclear accidents, aircraft accidents, earthquakes, hurricanes, tornadoes, tropical storms, war-related disasters, public health and medical emergencies, and other occurrences requiring an emergency response.

**Major Disaster.** As defined by the Stafford Act, any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President

causes damage of sufficient severity and magnitude to warrant major disaster assistance under this act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

**Mitigation.** Activities designed to reduce or eliminate risks to persons or property or to lessen the actual or potential effects or consequences of an incident. Mitigation measures may be implemented prior to, during, or after an incident. Mitigation measures are often developed in accordance with lessons learned from prior incidents. Mitigation involves ongoing actions to reduce exposure to, probability of, or potential loss from hazards. Measures may include zoning and building codes, floodplain buyouts, and analysis of hazard-related data to determine where it is safe to build or locate temporary facilities. Mitigation can include efforts to educate governments, businesses, and the public on measures they can take to reduce loss and injury.

**Mutual Aid Agreement.** Written agreement between agencies, organizations, and/or jurisdictions that they will assist one another on request by furnishing personnel, equipment, and/or expertise in a specified manner.

**Preparedness.** The range of deliberate, critical tasks and activities necessary to build, sustain, and improve the operational capability to prevent, protect against, respond to, and recover from domestic incidents. Preparedness is a continuous process involving efforts at all levels of government and between government and private-sector and nongovernmental organizations to identify threats, determine vulnerabilities, and identify required resources.

**Prevention.** Actions taken to avoid an incident or to intervene to stop an incident from occurring. Prevention involves actions taken to protect lives and property. It involves applying intelligence and other information to a range of activities that may include such countermeasures as deterrence operations; heightened inspections; improved surveillance and security operations; investigations to determine the full nature and source of the threat; public health and agricultural surveillance and testing processes; immunizations, isolation, or quarantine; and, as appropriate, specific law enforcement operations aimed at deterring, preempting, interdicting, or disrupting illegal activity and apprehending potential perpetrators and bringing them to justice.

**Recovery.** The development, coordination, and execution of service- and site-restoration plans for impacted communities and the reconstitution of government operations and services through individual, private-sector, nongovernmental, and public assistance programs that: identify needs and define resources; provide housing and promote restoration; address long-term care and treatment of affected persons; implement additional measures for community restoration; incorporate mitigation measures and techniques, as feasible; evaluate the incident to identify lessons learned; and develop initiatives to mitigate the effects of future incidents.

**Response.** Activities that address the short-term, direct effects of an incident. Response includes immediate actions to save lives, protect property, and meet basic human needs. Response also includes the execution of emergency operations plans and of incident mitigation activities designed to limit the loss of life, personal injury, property damage, and other unfavorable outcomes. As indicated by the situation, response activities include: applying intelligence and other information to lessen the effects or consequences of an incident; increased security operations; continuing investigations into the nature and source of the threat; ongoing public health and agricultural surveillance and testing processes; immunizations, isolation, or quarantine; and specific law enforcement operations aimed at preempting,

interdicting, or disrupting illegal activity, and apprehending actual perpetrators and bringing them to justice.

**Terrorism.** Any activity that (1) involves an act that (a) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and (b) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (2) appears to be intended (a) to intimidate or coerce a civilian population; (b) to influence the policy of a government by intimidation or coercion; or (c) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

**Threat.** An indication of possible violence, harm, or danger.

**United States.** The term "United States," when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States. (As defined in section 2(16) of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, et seq. (2002).)



## APPENDIX 3: AUTHORITIES AND REFERENCES<sup>65</sup>

### A. Statutes and Regulations

1. The **Homeland Security Act of 2002**, Pub. Law 107-296, 116 Stat. 2135 (2002) (codified predominantly at 6 U.S.C. §§ 101-557 and in other scattered sections of the U.S.C.), established the Department of Homeland Security with the mandate and legal authority to protect the American people from the continuing threat of terrorism. In the act, Congress assigned DHS the primary missions to:

- ! Prevent terrorist attacks within the United States;
- ! Reduce the vulnerability of the United States to terrorism at home;
- ! Minimize the damage and assist in the recovery from terrorist attacks that occur; and
- ! Act as the focal point regarding natural and manmade crises and emergency planning.

The Homeland Security Act gives the Secretary of Homeland Security full authority and control over the Department and the duties and activities performed by its personnel, and it vests the Secretary with the broad authority necessary to fulfill the Department's statutory mission to protect the American homeland. This statutory authority, combined with the President's direction in HSPD-5, supports the NRP's unified, effective approach to domestic prevention, preparedness, response, and recovery activities.

Responsibilities in the Homeland Security Act of particular relevance to the development and execution of the NRP include the following:

a. Preparedness of the United States for acts of terrorism. Executed through the DHS OSLGCP, this responsibility includes coordinating preparedness efforts at the Federal level, and working with State, local, tribal, parish, and private-sector emergency response providers on matters pertaining to combating terrorism.

b. Response to terrorist attacks, major disasters, and other emergencies. Executed through the Directorate of Emergency Preparedness and Response, this responsibility includes:

- ! Consolidating existing Federal emergency response plans into a single, coordinated national response plan;
- ! Building a comprehensive national incident management system to respond to such attacks and disasters;
- ! Ensuring the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;
- ! Providing the Federal Government's response to terrorist attacks, major disasters, and emergencies, including managing such response; and
- ! Coordinating Federal response resources in the event of a terrorist attack, major disaster, or emergency.

c. Coordination of homeland security programs with State and local government personnel, agencies, and authorities and with the private sector. Executed through the DHS OSLGCP and the Private Sector Office, this responsibility includes:

- ! Coordinating to ensure adequate planning, training, and exercise activities;
- ! Coordinating and consolidating appropriate Federal Government communications and systems of communications; and
- ! Distributing or coordinating the distribution of warnings and information.

d. Risk analysis and risk management. DHS/IAIP has primary authority for threat and event risk analysis and risk management within DHS, although other DHS organizations—such as the U.S. Secret Service, the OSLGCP, and the Border and Transportation Security Directorate—also engage in risk management. DHS/IAIP responsibilities include:

- ! Analyzing and integrating information from all available sources to identify, assess, detect, and understand terrorist threats against the United States;
- ! Carrying out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure, including risk assessments to determine the risks posed by particular types of terrorist attacks within the United States;
- ! Identifying priorities for and recommending protective and support measures for such infrastructure by all concerned;
- ! Developing a comprehensive national plan (the National Infrastructure Protection Plan (NIPP)) for securing critical infrastructure and key resources, such as power and telecommunications; and
- ! Conducting risk assessments and vulnerability assessments after other agencies have conducted those studies and ranked top items based on those studies.

e. Preventing the entry of terrorists and the instruments of terrorism into the United States. Executed through the Border and Transportation Security Directorate, this responsibility includes:

- ! Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States; and
- ! Carrying out immigration enforcement functions.

2. The **Robert T. Stafford Disaster Relief and Emergency Assistance Act**, 93 Pub. L. No. 288, 88 Stat. 143 (1974) (codified as amended at 42 U.S.C. §§ 5121-5206, and scattered sections of 12 U.S.C., 16 U.S.C., 20 U.S.C., 26 U.S.C., 38 U.S.C. (2002)), establishes the programs and processes for the Federal Government to provide disaster and emergency assistance to States, local governments, tribal nations, individuals, and qualified private nonprofit organizations. The provisions of the Stafford Act cover all hazards including natural disasters and terrorist events. Relevant provisions of the Stafford Act include a process for Governors to request Federal disaster and emergency assistance from the President. The President may declare a major disaster or emergency:

- ! If an event is beyond the combined response capabilities of the State and affected local governments; and
- ! If, based on the findings of a joint Federal-State-local PDA, the damages are of sufficient severity and magnitude to warrant assistance under the act. (Note: In a particularly fast-moving or clearly devastating disaster, DHS/EPR/FEMA may defer the PDA process until after the declaration.)

a. If an emergency involves a subject area for which the Federal Government exercises exclusive or preeminent responsibility and authority, the President may unilaterally direct the provision of emergency assistance under the Stafford Act. The Governor of the affected State will be consulted if practicable.

b. DHS/EPR/FEMA can pre-deploy personnel and equipment in advance of an imminent Stafford Act declaration to reduce immediate threats to life, property, and public health and safety, and to improve the timeliness of disaster response.

c. During the immediate aftermath of an incident which may ultimately qualify for assistance under the Stafford Act, the Governor of the State in which such incident occurred may request

the President to direct the Secretary of Defense to utilize the resources of the DOD for the purpose of performing on public and private lands any emergency work that is made necessary by such incident and that is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practical. Such emergency work may only be carried out for a period not to exceed 10 days.

d. The Stafford Act directs appointment of an FCO by the President. The FCO is designated by the DHS Under Secretary for Emergency Preparedness and Response to coordinate the delivery of Federal assistance to the affected State, local, and tribal governments and disaster victims.

e. Federal agencies must avoid duplicating resources and benefits for disaster victims. Disaster victims are responsible for repayment of Federal assistance duplicated by private insurance, or other Federal programs, or when they have been otherwise compensated for their disaster-related losses.

f. All authorities under the Stafford Act granted to the Secretary of Homeland Security in the Homeland Security Act have been redelegated to the Under Secretary of EPR through Delegation No. 9001.

3. The **Posse Comitatus Act**, 18 U.S.C. § 1385 (2002), prohibits the use of the Army or the Air Force for law enforcement purposes, except as otherwise authorized by the Constitution or statute. This prohibition applies to Navy and Marine Corps personnel as a matter of DOD policy. The primary prohibition of the Posse Comitatus Act is against direct involvement by active duty military personnel (to include Reservists on active duty and National Guard personnel in Federal service) in traditional law enforcement activities (to include interdiction of vehicle, vessel, aircraft, or other similar activity; directing traffic; search or seizure; an arrest, apprehension, stop and frisk, or similar activity). **(Note exception under the Insurrection Statutes.)** Exceptions to the Posse Comitatus Act are found in 10 U.S.C. §§ 331-335 (2002) and other statutes.

## **B. Executive Orders**

1. **Executive Order 12148**, 44 Fed. Reg. 43239 (1979), as amended by Exec. Order 13286, 68 Fed. Reg. 10619 (2003), designates DHS as the primary agency for coordination of Federal disaster relief, emergency assistance, and emergency preparedness. The order also delegates the President's relief and assistance functions under the Stafford Act to the Secretary of Homeland Security, with the exception of the declaration of a major disaster or emergency.

2. **Executive Order 12656**, 53 Fed. Reg. 47491 (1988), Assignment of Emergency Preparedness Responsibilities, as amended by Exec. Order 13286, 68 Fed. Reg. 10619 (2003), assigns lead and support responsibilities to each of the Federal agencies for national security emergency preparedness. The amendment designates DHS as the principal agency for coordinating programs and plans among all Federal departments and agencies.

3. **Executive Order 13354**, 69 Fed. Reg. 53589 (2004), National Counterterrorism Center, establishes policy to enhance the interchange of terrorism information among agencies and creates the National Counterterrorism Center to serve as the primary Federal organization in the U.S. Government for analyzing and integrating all intelligence information posed by the United States pertaining to terrorism and counterterrorism.



4. **Executive Order 13356**, 69 Fed. Reg. 53599 (2004), Strengthening the Sharing of Terrorism Information to Protect Americans, requires the Director of Central Intelligence, in consultation with the Attorney General and the other intelligence agency heads, to develop common standards for the sharing of terrorism information by agencies within the Intelligence Community with 1) other agencies within the Intelligence Community, 2) other agencies having counterterrorism functions, and 3) through or in coordination with the Department of Homeland Security, appropriate authorities of State and local governments.
5. **Executive Order 12580**, 52 Fed. Reg. 2923 (1987), Superfund Implementation, as amended by numerous Executive orders, delegates to a number of Federal departments and agencies the authority and responsibility to implement certain provisions of CERCLA. The policy and procedures for implementing these provisions are spelled out in the NCP and are overseen by the NRT.
6. **Executive Order 12382**, 47 Fed. Reg. 40531 (1982), as amended by numerous Executive orders, President's National Security Telecommunications Advisory Committee (NSTAC). This order provides the President with technical information and advice on national security telecommunications policy. Up to 30 members from the telecommunications and information technology industries may hold seats on the NSTAC.
7. **Executive Order 12472**, 49 Fed. Reg. 13471 (1984), Assignment of National Security and Emergency Preparedness Telecommunications Functions, as amended by Exec. Order 13286, 68 Fed. Reg. 10619 (2003). This order consolidated several directives covering NSEP telecommunications into a comprehensive document explaining the assignment of responsibilities to Federal agencies for coordinating the planning and provision of NSEP telecommunications. The fundamental NSEP objective is to ensure that the Federal Government has telecommunications services that will function under all conditions, including emergency situations.
8. **Executive Order 12742**, 56 Fed. Reg. 1079 (1991), National Security Industrial Responsiveness, as amended by Exec. Order 13286, 68 Fed. Reg. 10619 (2003). This order states that the United States must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt delivery of articles, products, and materials to meet national security requirements, the Government may place orders and require priority performance of these orders.
9. **Executive Order 13284**, 68 Fed. Reg. 4075 (2003), Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security. This order amended previous Executive orders in order to make provisions for the establishment of DHS.
10. **Executive Order 13286**, 68 Fed. Reg. 10619 (2003), Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security. This order reflects the transfer of certain functions to, and other responsibilities vested in, the Secretary of Homeland Security, as well as the transfer of certain agencies and agency components to DHS, and the delegation of appropriate responsibilities to the Secretary of Homeland Security.
11. **Executive Order 12333**, 46 Fed. Reg. 59941 (1981), United States Intelligence Activities, designates DOE as part of the Intelligence Community. It further defines counterintelligence as information gathered and activities conducted to protect against espionage, sabotage, or

assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities. This order specifically excludes personnel, physical, document, or communications security programs from the definition of counterintelligence.

12. **Executive Order 12919**, 59 Fed. Reg. 29625 (1994), National Defense Industrial Resources Preparedness, as amended by Exec. Order 13286, 68 Fed. Reg. 10619 (2003). This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended, except for the amendments to Title III of the act in the Energy Security Act of 1980 and telecommunication authorities under Exec. Order 12472, 49 Fed. Reg. 13471 (1984).

13. **Executive Order 12777**, 56 Fed. Reg. 54757 (1991), Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990, as amended by Exec. Order 13286, 68 Fed. Reg. 10619 (2003). Implemented section 311 of the FWPCA as amended by OPA 90.

14. **Executive Order 13295**, 68 Fed. Reg. 17255 (2003), Revised List of Quarantinable Communicable Diseases. Specifies certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases.

15. **Executive Order 12196**, 45 Fed. Reg. 12769 (1980), Occupational Safety and Health Programs for Federal Employees. This order sets the OSHA program guidelines for all agencies in the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

### **C. Presidential Directives**

1. **Presidential Decision Directive 39**: U.S. Policy on Counterterrorism, June 21, 1995, establishes policy to reduce the Nation's vulnerability to terrorism, deter and respond to terrorism, and strengthen capabilities to detect, prevent, defeat, and manage the consequences of terrorist use of WMD; and assigns agency responsibilities.

2. **Presidential Decision Directive 62**: Combating Terrorism, May 22, 1998, reinforces the missions of Federal departments and agencies charged with roles in defeating terrorism.

3. **Homeland Security Presidential Directive-1**: Organization and Operation of the Homeland Security Council, Oct. 29, 2001. This directive establishes policies for the creation of the HSC, which shall ensure the coordination of all homeland security-related activities among executive departments and agencies and promote the effective development and implementation of all homeland security policies.

4. **Homeland Security Presidential Directive-2**: Combating Terrorism Through Immigration Policies, Oct. 29, 2001. This directive mandates that, by November 1, 2001, the Attorney General shall create the Foreign Terrorist Tracking Task Force, with assistance from the Secretary of State, the Director of Central Intelligence, and other officers of the Government, as appropriate. The Task Force shall ensure that, to the maximum extent permitted by law, Federal agencies coordinate programs to accomplish the following: 1) deny entry into the United States of aliens associated with, suspected of being engaged in, or supporting terrorist activity; and 2) locate, detain, prosecute, or deport any such aliens already present in the United States.

**5. Homeland Security Presidential Directive-3:** Homeland Security Advisory System, March 11, 2002. This directive establishes policy for the creation of a Homeland Security Advisory System, which shall provide a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to Federal, State, and local authorities and to the American people. Such a system would provide warnings in the form of a set of graduated "Threat Conditions" that would increase as the risk of the threat increases. At each Threat Condition, Federal departments and agencies would implement a corresponding set of "Protective Measures" to further reduce vulnerability or increase response capability during a period of heightened alert.

**6. Homeland Security Presidential Directive-4:** National Strategy to Combat Weapons of Mass Destruction, December 2002. Sets forth the National Strategy to Combat Weapons of Mass Destruction based on three principal pillars: (1) Counterproliferation to Combat WMD Use, (2) Strengthened Nonproliferation to Combat WMD Proliferation, and (3) Consequence Management to Respond to WMD Use. The three pillars of the U.S. national strategy to combat WMD are seamless elements of a comprehensive approach. Serving to integrate the pillars are four cross-cutting enabling functions that need to be pursued on a priority basis: intelligence collection and analysis on WMD, delivery systems, and related technologies; research and development to improve our ability to address evolving threats; bilateral and multilateral cooperation; and targeted strategies against hostile states and terrorists.

**7. Homeland Security Presidential Directive-5:** Management of Domestic Incidents , February 28, 2003, is intended to enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system. In HSPD-5 the President designates the Secretary of Homeland Security as the PFO for domestic incident management and empowers the Secretary to coordinate Federal resources used in response to or recovery from terrorist attacks, major disasters, or other emergencies in specific cases. The directive assigns specific responsibilities to the Attorney General, Secretary of Defense, Secretary of State, and the Assistants to the President for Homeland Security and National Security Affairs, and directs the heads of all Federal departments and agencies to provide their "full and prompt cooperation, resources, and support," as appropriate and consistent with their own responsibilities for protecting national security, to the Secretary of Homeland Security, Attorney General, Secretary of Defense, and Secretary of State in the exercise of leadership responsibilities and missions assigned in HSPD-5. The directive also notes that it does not alter, or impede the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law.

**8. Homeland Security Presidential Directive-6:** Integration and Use of Screening Information, September 16, 2003. In order to protect against terrorism, this directive establishes the national policy to: (1) develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (Terrorist Information); and (2) use that information as appropriate and to the full extent permitted by law to support (a) Federal, State, local, territorial, tribal, foreign-government, and private-sector screening processes, and (b) diplomatic, military, intelligence, law enforcement, immigration, visa, and protective processes.

**9. Homeland Security Presidential Directive-7:** Critical Infrastructure Identification, Prioritization, and Protection, December 17, 2003. This directive establishes a national policy for Federal departments and agencies to identify and prioritize U.S. critical infrastructure and key resources and to protect them from terrorist attacks.

10. **Homeland Security Presidential Directive-8:** National Preparedness, December 17, 2003. This directive establishes policies to strengthen the preparedness of the United States to prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies by requiring a national domestic all-hazards preparedness goal, establishing mechanisms for improved delivery of Federal preparedness assistance to State and local governments, and outlining actions to strengthen preparedness capabilities of Federal, State, and local entities.

11. **Homeland Security Presidential Directive-9:** Defense of United States Agriculture and Food, January 30, 2004. This directive establishes a national policy to defend the agriculture and food system against terrorist attacks, major disasters, and other emergencies.

12. **Homeland Security Presidential Directive-10:** Biodefense for the 21st Century, April 28, 2004. This directive provides a comprehensive framework for the Nation's biodefense and, among other things, delineates the roles and responsibilities of Federal agencies and departments in continuing their important work in this area.

13. **National Security Directive 42:** National Policy for the Security of National Security Telecommunications and Information Systems, July 5, 1990. This directive establishes initial objectives of policies, and an organizational structure to guide the conduct of activities to secure national security systems from exploitation; establishes a mechanism for policy development and dissemination; and assigns responsibilities for implementation.



## ENDNOTES

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